NOTES OF CASES.

SURETIES on a note made to raise money by discount are held, in *Greenville* v. *Ormand* (S. C.) 39 L. R. A. 847, to be released by the discount of the note by a person other than the nominal payee, on the payee's mere indorsement of the note without recourse.

THE right of an assignee of a rent note to the remedy of distress is denied, in *Hutsell* v. *Deposit Bank* (Ky.), 39 L. R. A. 403, where the statute does not give the right, although it authorizes the assignment of the rent and its recovery by the assignee.

A POLICE JUDGE ordering the commitment of a person without any evidence or warrant except a telegram to the chief of police to arrest him, is held, in *Glazer* v. *Hubbard* (Ky.), 39 L. R. A. 210, to be guilty of false imprisonment, although his motives may not have been improper or corrupt.

A NOTE payable in specified bonds at par is held, in *Johnson* v. *Dooley* (Ark.) 40 L. R. A. 74, to continue to be payable in such bonds notwithstanding a failure to pay or tender the bonds on the day the note is due, where the note does not give a mere privilege or option to pay in bonds, but makes a positive and absolute promise to pay in that manner. See 4 Minor's Inst. (3d. ed.) 551.

A MAN who hires lodging rooms in a dwelling house, and then brings dissolute and immoral persons to those rooms, and applies them to the purposes of assignation or to create a nuisance therein, is held, in *Sullivan* v. *Waterman* (R. I.), 39 L. R. A. 773, to be liable to the owner of the building for injury to the good name of the house and for damage to his custom and business.

THE right of an administrator *de bonis non* to maintain an action against the estate of his predecessor for money of the estate wrongfully received by the predecessor, and not accounted for, is denied in *Hodge* v. *Hodge* (Me.), 40 L. R. A. 33, if such money is not distinguishable as part of the intestate's property. With the case is a very extensive note on the question of what assets pass to the administrator *de bonis non*. See *Cheatham* v. *Burfoot*, 9 Leigh, 580; Virginia Code, sec. 2648; 3 Minor's Inst. 571.

THE ancient right of a person accused of crime under indictment or information, to appear in court unfettered, is held, in *State* v. *Williams* (Wash.), 39 L. R. A. 821, to be preserved by legislative adoption of the common law, and the constitutional right to appear and defend in person is held to include the right to appear unfettered, unless restraint is necessary to secure the safety of others and the custody of the prisoner. With this case is a note marshalling the authorities on the right of the prisoner to appear unmanacled at his trial.

In *Riley* v. *Sherwood* (Mo.), 45 S. W. 1077, a case involving the testamentary capacity of a testatrix, who was a native of Virginia, but resided in Missouri, the contestant introduced evidence of a passionate fondness of the decedent for dwelling upon the memories of olden times back in old Virginia, and urged this as evidence of her insanity. Gannt, P. J., who probably has some of the blue blood of the Old Dominion in his own veins, delivered the opinion of the court, and thus disposes of this evidence of insanity:

"Again it was considered evidence of insanity that Mrs. Shootman in her old age delighted to recall the recollections of her childhood and young womanhood in Salem, Virginia. It was said the constant repetition of those events in her life was evidence of an unsound mind. To one who never lived in the Old Dominion prior to the late war between the States, the fondness with which all Virginians dwell upon those halcyon days, sweetened with an unrivaled hospitality, this tendency to recall again and again the memories of that period, may seem unnatural; but to those who knew Virginia at that time, even as casual sojourners, instead of being evidence of weakness it would excite suspicion should a Virginian neglect for any considerable time to recount the glories and delights of that period. Indeed, it can be said that such was the spell of that life that all who came within its influence became intoxicated with its charms, and ever afterwards dwelt with loving reiteration upon its refinement. We are unwilling to believe that any considerable number of the most advanced neurologists would see in this amiable disposition to linger over the memories of youth and home the most remote evidence of unsoundness of mind. Certain it is that the courts of this land reject it as evidence of incapacity to make a will."

Disqualification of Judge for Interest—Municipal Corporations.—In *Meyer* v. *City of Diego* (Cal.), 53 Pac. 434, it is held that a judge who is an inhabitant and a tax-payer of a city is disqualified, by reason of his interest in the result, to try any case in which the pecuniary interest of the city is involved, directly and materially affecting the judge as a tax-payer. The opinion is a learned one, and contains a full review of the authorities.

"The interest," says Henshaw, J., "which one has in a public question, merely because he is a member of the civic body to be affected by the question, is not the interest which the law has in mind. In the case from which we have just quoted, the judge in probate was not held to be disqualified because in a will before him there was a bequest of money to trustees to be devoted to the use and benefit of indigent persons in certain towns, of one of which the judge was an inhabitant. So, in *Foreman* v. *Town of Mariana*, *infra*, the judge, who was an inhabitant of the town, was not for that reason held to be disqualified to sit in and determine upon proceedings for the annexation of territory to the town, although an election had been called to pass upon the question of annexation, and the judge had voted thereat. And so, in *Sauls* v. *Freeman*, 24 Fla. 209, 4 South. 525, the fact that the circuit judge, with other registered voters of the county, had signed a petition addressed to the county commissioners, asking for a change of the county site, did not disqualify him for interest for sitting in a mandamus proceeding to compel the commissioners to call an election upon the question. In these and like cases the so-

called "interest" of the judge is found to be remote, doubtful and speculative, in no way certain in fact, nor susceptible of precise measurement.

"But, upon the other hand, where, in any litigation, there is any certain, definable, pecuniary, or proprietary interest or relation which will be directly affected by the judgment that may be rendered, in every such case, without exception, so far as an exhaustive examination of the authorities goes, the disqualification of the judge is held to exist. Has the judge any pecuniary or personal right or privilege directly affected by or immediately dependent upon the result of the case? As that question is answered, so is answered the question of his disqualification for the interest which we have been considering."

Hesketh v. *Braddock*, 3 Burrows, 1856; *State* v. *Stuart*, 23 Me. 112; *State* v. *Woodward*, 34 Me. 293; *Com.* v. *Ryan*, 5 Mass. 90; *Pearce* v. *Atwood*, 13 Mass. 324; *Trustees* v. *Bailey*, 10 Fla. 213; *Moses* v. *Julian*, 45 N. H. 52; *Inhabitants of North Hampton* v. *Smith*, 11 Metc. (Mass.) 390; *Foreman* v. *Town of Mariana*, 43 Ark. 324; *Peck* v. *Freeholders of Essex*, 21 N. J. Law, 656; *Sauls* v. *Freeman*, 24 Fla. 209, 4 South. 525; *Com.* v. *Reed*, 1 Gray, 472; *Ellis* v. *Smith*, 42 Ala. 349; *Fine* v. *Public Schools*, 30 Mo. 166; *Stockwell* v. *Board*, 22 Mich. 341; *Fiske* v. *Paine* (R. I.), 28 Atl. 1026; *Dimes* v. *Canal Co.*, 16 Eng. Law & Eq. 63; *Oakley* v. *Aspinwall*, 3 N. Y. 547; *City of Austin* v. *Nalle*, 85 Tex. 520, 22 S. W. 668, 960; *Wetzel* v. *State* (Tex.), 23 S. W. 825; *State* v. *City of Cisco* (Tex.), 33 S. W. 244; Van Fleet, J., dissented. See 1 Dillon Munic. Corp. (4th ed.) 431.

THE liability of a county to its employee injured by a defective machine in an insane asylum is denied, in *Hughes* v. *Monroe County* (N. Y.), 39 L. R. A. 33, where the asylum is maintained by the county as a political division of the State, although some revenue is incidentally derived from the sale of surplus farming products, and from payments by those liable for the support of insane persons kept therein.

Although a county is declared to be a municipal corporation by statute, it is held, in *Markey* v. *Queens County* (N. Y.), 39 L. R. A. 46, that such statute does not create any new liability for torts, or make the county liable for negligence in maintaining a bridge.

A long line of Indiana cases is overruled by *Jasper County Comrs.* v. *Allman*, 142 Ind. 572, 39 L. R. A. 58, which denies the liability of a county for negligence of its officers in respect to keeping a bridge in repair.

A county which expressly authorizes or ratifies the tortious acts of its officers who assume to act under an unconstitutional statute, to the injury of riparian rights, is held, in *Schussler* v. *Hennepin County Comrs.* (Minn.), 39 L. R. A. 75, to be liable for the damages. With the four cases above named is an extensive note compiling the great number of authorities on the liability of counties in actions for torts and negligence. See *Fry* v. *Albemarle County*, 86 Va. 195; *Field* v. *Albemarle County* (Va.), 20 S. E. 954.